

REMARKS/ARGUMENTS

Applicants thank the Office for the Office Action mailed January 9, 2008. The status of the claims is as follows.

Claims 1-39 are pending, and claims 2-3, 5, 8, 11, 15, 17, 19-22, 26, and 29-37 have been amended herein.

Claims 2-3, 5, 8, 11, 19-21, 26, 29 and 32-37 are objected to for informalities.

Claims 11, 15, 17, 21-22 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 29-31 are rejected under 35 U.S.C. 101 as being directed towards non-statutory subject matter.

Claims 1, 3, 6, 8-9, 11-13, 23, 25, 32, 35 and 38-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoffman et al. (US 2005/0137973).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Dresden (US 2005/0021440).

Claims 4, 7, 10, 14-18, 21-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al.

Claims 5, 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Abrams et al. (US 2002/0166117).

Claims 19-20, 33-34 and 36, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Hensley et al. (US 2004/0133790).

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Hensley in further view of Abrams et al.

The objection and rejections are discussed below.

The rejections of 2-3, 5, 8, 11, 19-21, 26, 29 and 32-37 objected to for informalities.

Claims 2-3, 5, 8, 11, 19-21, 26, 29 and 32-37 stand objected to for informalities. This objection should be withdrawn as the subject claims have been amended as suggested by the Office.

The Rejection of Claims 11, 15, 17, 21-22 and 26 under 35 U.S.C. 112, Second Paragraph

Claims 11, 15, 17, 21-22 and 26 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 11, 15, 17, 21-22 and 26 have been amended herein to overcome this rejection.

The Rejection of Claims 29-31 under 35 U.S.C. 101

Claims 29-31 stand rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. In particular, the subject claims are drawn to a service. This rejection should be withdrawn as the claims have been amended to be drawn to a method.

The Rejection of 1, 3, 6, 8-9, 11-13, 23, 25, 32, 35, and 38-39 under 35 U.S.C. 102(e)

Claims 1, 3, 6, 8-9, 11-13, 23, 25, 32, 35, and 38-39 stand rejected under 35 U.S.C. 102(e) as being anticipated by Hoffman. This rejection should be withdrawn because Hoffman does not teach each and every element as set forth in the subject claims and, therefore, does not anticipate claims 1, 3, 6, 8-9, 11-13, 23, 25, 32, 35, and 38-39.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). MPEP §2131.

Independent **claim 1** is directed towards a method comprising charging a first price for a computer system, tracking the execution by the computer system of at least one chargeable technology, and charging an additional price for each execution of the at least one chargeable technology by the computer system. Hoffman et al. does not teach or suggest each and every one of these aspects as forth in the subject claim.

In particular, Hoffman et al. relates to charging for *computer usage*, and not for execution of a chargeable technology by the computer as recited in the subject claim.

More particularly, Hoffman et al. discloses a method that includes assigning an economic value to each partition of a computer system based on a value of a task to be performed and the processing power assigned to perform the task, and charging for utilized processor performance within each partition based on rates established for each partition. Each partition may be assigned a metering key which enables metering and reporting of the processor performance utilization of each partition. Hence, Hoffman et al. teaches charging for **computer usage**, and not for execution of a chargeable technology by the computer.

The Office asserts that Hoffman et al., paragraphs [0013]-[0014], teaches tracking the execution by the computer system of at least one chargeable technology and charging an additional price for each execution of the at least one chargeable technology by the computer system. Applicants traverse this assertion. Paragraph [0013] summarizes a method for billing for **computer usage**. The method includes monitoring the **usage of processor performance** in a partition, generating a report indicating the **usage of processor performance**, and generating a bill based on a **specific computer usage rate in conjunction with the usage of performance**. Paragraph [0014] provides that the method also includes assigning a performance/value pair for each partition, and that the sum of the pairs defines a total economic value for the computer. Paragraphs [0040] and [0049] further state that the economic value is based on **instruction processor performance** of a partition, and paragraph [0050] discloses that such processor performance is measured in units of millions of instructions per seconds (MIPS).

Hence, Hoffman et al. relates to charging a customer for **computer usage, or usage of a processor in a partition**. This does not teach or suggest the subject claim aspects. By way of example, in Hoffman et al. a customer is charged for computer usage even when the computer executes a non-chargeable technology, for example, by paying for a number of instructions up front or by paying for a number of instructions in addition to those instructions already paid for. Furthermore, Hoffman et al. does not charge a customer for execution of a chargeable technology when execution of the chargeable technology is accomplished within the prepaid computer usage. This is because Hoffman et al. charges based on purchased computer usage and not on whether chargeable technology or non-chargeable technology is executed by a computer.

In view of the foregoing, this rejection should be withdrawn.

Claims 3, 6 and 38 depend from claim 1 and are allowable at least by virtue of their dependencies.

Independent **claim 8** recites aspects similar to those recited in claim 1. As such, the discussion above regarding claim 1 applies *mutatis mutandis* to claim 8. Claim 8 further recites selecting execution of a chargeable technology on a client computing system, collecting data relating to the execution of the chargeable technology on the client computing system, and storing the collected data in a protected storage area on the system. The Office asserts that Hoffman et al., paragraphs [0013], [0014] and [0067], teach these claim aspects. Paragraph [0067] is relied on for teaching the storing aspect. From the discussion above, it is readily apparent that paragraphs [0013] and [0014] do not teach or suggest any of these claim aspects, and paragraph [0067] relates to metering billable processor performance to gather computer usage information. Thus, these sections do not teach or suggest aspects related to the execution of a chargeable technology by a computer. Therefore, this rejection should be withdrawn.

Claims 11-13 and 39 directly or indirectly depend from claim 8 and are allowable at least by virtue of their dependencies.

Independent **claim 23** recites receiving at a central location data representing at least one execution by a remote system of at least one chargeable technology, and storing the data in a protected area of said central location. The Office asserts that Hoffman et al., teaches these aspects at paragraphs [0013], [0014], and [0067]. As discussed *supra*, these sections Hoffman et al. are related to computer processor performance information and not execution of a chargeable technology, let alone execution by a remote system and storing thereof in a protected area of a central location. Hence, this rejection should be withdrawn.

Claim 25 depends from claim 23 and is allowable at least by virtue of this dependency.

Independent **claim 32** is directed towards a computer system, which includes a CPU and a chargeable technology usage tracking component accessible for execution on the CPU for tracking execution by the system of the at least one chargeable technology.

Again, Hoffman et al. is not directed towards executing chargeable technology and tracking execution thereof. Thus, this rejection should be withdrawn.

Independent **claim 35** is directed towards a central location computer system, which includes a chargeable technology data receiving component for receiving from remote systems data indicative of execution of said remote systems of at least one chargeable technology and a technology usage data reporting and billing component for periodically sending to the remote systems a usage report detailing the use by the remote systems of the at least one chargeable technology. As discussed above, Hoffman et al. does not teach or suggest such aspects and, therefore, this rejection should be withdrawn.

The Rejection of Claim 2 under 35 U.S.C. 103(a)

Claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Dresden. **Claim 2** depends from claim 1 and is allowable at least by virtue of this dependency.

The Rejection of Claims 4, 7, 10, 14-18, 21-22 and 24 under 35 U.S.C. 103(a)

Claims 4, 7, 10, 14-18, 21-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman. This rejection should be withdrawn because Hoffman does not teach or suggest all the limitations of the subject claims and, therefore, fails to establish a *prima facie* case of obvious with respect to the subject claims.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, (CCPA 1974). MPEP §2143.03.

Claims 4 and 7 indirectly depend from claim 1 and are allowable at least by virtue of their dependencies.

Claims 10 and 14 indirectly depend from claim 8 and are allowable at least by virtue of their dependencies.

Independent **claim 15** recites aspects similar to those recited in claim 8. As such, the discussion above regarding claim 8 applies *mutatis mutandis* to claim 15. Claim 15

further recites recognizing in a computer system an event indicating a need for execution by the computer system of at least one chargeable technology. The Office concedes that Hoffman et al. does not teach or suggest such aspect, but asserts that it would be obvious to do so. The Office notes that this is typical when a user of a home computer initiates a virus cleaning program. Applicants traverse this assertion. Applicant submits that initiating a virus cleaning program based on some recognized problem with a computer does not necessitate a need for execution by the computer system of at least one chargeable technology. For example, where the virus program is freeware or has already been purchased, execution of the program based on such an event is not chargeable.

Claims 16-18 and 21-22 directly or indirectly depend from claim 15 and are allowable at least by virtue of their dependencies.

Claim 24 depends from claim 23 and is allowable at least by virtue of this dependency.

The Rejection of Claims 5, 26-31 under 35 U.S.C. 103(a)

Claim 5 depends from claim 1 and is allowable at least by virtue of this dependency.

Claims 26-28 indirectly depend from claim 23 and are allowable at least by virtue of their dependencies.

Independent **claim 29**, similar to the other independent claims, is directed towards execution of a chargeable technology by a computer. As discussed *supra*, the prior art of record does not teach or suggest such claim aspects.

Claims 30 and 31 depend from claim 29 and are allowable at least by virtue of their dependencies.

The Rejection of Claims 19-20, 33-34 and 36 under 35 U.S.C. 103(a)

Claims 19-20, 33-34 and 36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Hensley et al. **Claims 19 and 20** directly or indirectly depend from claim 15 and are allowable at least by virtue of their dependencies. **Claims 33 and 34** depend from claim 32 and are allowable at least by

virtue of their dependencies. **Claim 36** depends from claim 35 and is allowable at least by virtue of this dependency.

The Rejection of Claims 37 under 35 U.S.C. 103(a)

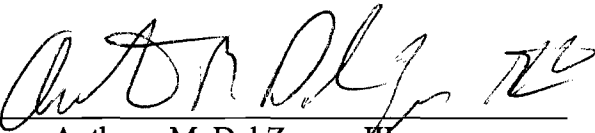
Claim 37 indirectly depends from claim 35 and is allowable at least by virtue of this dependency.

Conclusion

In view of the foregoing, it is submitted that the subject claims distinguish patentably and non-obviously over the prior art of record. An early indication of allowability is earnestly solicited.

Respectfully submitted,

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